

Bloggers have rights too

By John Conyers

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The Internet has proven to be the greatest advancement in our ability to disseminate news and information since the invention of the printing press by Gutenberg in 1450.

Web Loggers, or "bloggers," have already broken several major stories, including those that led to the resignation of a Virginia congressman, a shake-up at CBS news over the "60 Minutes" Bush National Guard story, the firing of a CNN executive over remarks criticizing the U.S. military, and the White House granting Jeff Gannon inappropriate access to White House daily press briefings.

Unfortunately, today in two separate arenas--campaign finance laws and the legal privileges accorded to journalists to protect confidential sources--bloggers' free speech rights are at risk. It is incumbent on the Federal Election Commission (FEC), legislatures, and the courts to ensure these rights are protected for Internet-based media.

The FEC is currently considering bloggers' role as journalists as it intersects with the Bipartisan Campaign Reform Act (BCRA). Late last year, the District Court for the District of Columbia overturned the FEC's blanket exemption of the Internet from campaign finance law.

The FEC must therefore decide whether to characterize Web reporters as members of the press warranting a BCRA exemption similar to that of the print and broadcast media. I recently wrote a letter along with 13 of my colleagues urging the FEC to apply the press exemption to the Internet, and Sen. Harry Reid has introduced legislation to this effect.

The state courts have also considered the issue of bloggers' First Amendment rights. Last month, Apple Computer sought a California court's permission to serve subpoenas on three Web sites for publishing Apple's trade secrets. Bloggers argued the subpoenas violated their First Amendment rights to maintain confidential sources.

The Superior Court judge eventually ruled against the bloggers, however, and in doing so the court did not reach the issue of whether they should be considered journalists and entitled to First Amendment protection. So the legal issue of journalist privileges for bloggers is still unresolved.

The confluence of these two cases indicates that we are at a turning point in the evolution of Internet-based media. I believe bloggers have shown they warrant First Amendment protection for several reasons.

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First, bloggers have become widely accepted as legitimate news gatherers and disseminators.

Columbia University's Project for Excellence in Journalism reports that 32 million Americans are currently turning to blogs for their information. Bloggers were granted press passes to both the Democratic and Republican National Conventions last summer, and the White House recently approved the first blog press pass to a day's gaggle.

Bloggers should be classified as journalists and given First Amendment protections based on the function they perform, not the form of their transmissions. Properly understood, the First Amendment applies to all those who report with journalistic integrity--offline or online.

Bloggers are not subject to corporate constraints or concerns, and have shown their independence over and over.

In a prescient 1993 decision, the 9th U.S. Circuit Court of Appeals found that an author had standing to invoke a reporter's privilege when the court ruled that "what makes journalism journalism is not its format but its content." The same principle and rights should apply to bloggers--if they are producing similar content and using similar journalistic techniques as the mainstream media. Ironically, many of the "established" media outlets have also migrated online with some even running their own blogs.

For better or worse, we operate in an environment where major conglomerates such as News Corp., General Electric, Disney, Viacom, Gannett, Knight-Ridder and Clear Channel dominate the nation's airwaves

and print media. Whenever a potential story criticizing a powerful political figure or corporate parent is squelched, questions are raised concerning the independence of the mainstream news media. Bloggers, by contrast, are not subject to these same constraints or concerns, and have shown their independence over and over.

I agree with Thomas Jefferson's sentiments when he wrote, "the basis of our government being the opinion of people, the very first object should be to keep that right; and were it left to me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate for a moment to prefer the latter."

In Jefferson's era, print newspapers revolutionized the way the country read and processed the news. Today we stand on the precipice of a new media revolution with the advent of the Internet. We need to protect bloggers' First Amendment rights so they can help us protect our own citizens' rights.

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